

REMARKS

This is in response to the Official Action of December 20, 2002. In the Official Action Claims 36-38, 43-49, 58, 60 and 73-75 were indicated to be allowable if rewritten in independent form. These claims correspond to new Claims 77-91. Accordingly, these claims should be considered allowable. Independent Claim 33 has been rewritten using more specific terminology as Claim 92. Independent method Claim 56 has been rewritten in much the same manner as Claim 105 and independent method Claim 76 has also, in much the same manner, been rewritten as Claim 120. The other claims are dependent claims which depend from Claims 92 and 105 and are directed to generally the same subject matter as the claims which depended from Claims 33 and 56 and were not indicated to be allowable in the Official Action. Claims 1 and 18 have been cancelled without prejudice.

For many years agricultural produce consisting essentially of cut crop has been formed into bales and although such bales may be left in the open, they are often stored under a roof or in a barn or the like. Originally most bales were in a rectilinear form and were bound into such form by wire which automatically wrapped the bales in the baling operation. About the end of World War II, twine was used instead of wire to bind many of such bales. In more recent years bales have been formed in cylinders, usually tied with twine, and can be more easily unwrapped to be consumed by livestock, usually cattle. The cylindrical bales are sometimes covered, at least on their cylindrical sides, with polyethylene sheeting or other plastic materials. Of course also cut crop has been stored for many years in silos. The invention is directed to the wrapping of cut crop such as hay, straw or fresh or wilting grass into tightly wrapped bales. These bales completely and entirely surround the cut crop, the tighter the better, so that the cut crop matures into silage in a relatively short period of time while in the bale without releasing fluids that are damaging to the environment in contrast when the freshly cut crop is stored in silos and silage

towers. It is important that purchasers of such wrapped bales be aware of information concerning the nature of the cut crop within the bales, when they were baled, how tightly they have been baled, and in some cases who did the baling. As anyone who is familiar with bales of cut crop can attest, the bales in accordance with the invention, no matter how tightly wrapped, are necessarily pliant to some degree - much more so than is the case with boxed materials or materials such as rolls of paper. Thus although the labels on the inventors' bales are important -- more so than usually is the case, it is certainly not predictable that ordinary labeling techniques would necessarily be selected and utilized by those skilled in the art or that the same information usually found in labels would be the information applied to such labels. Accordingly, the invention in this case is directed to the combination of the unique bales of agricultural produce consisting essentially of cut crop and the means and methodology of applying labels thereto.

In the Official Action the primary reference applied for rejection of claims was U.S. Patent No. 5,024,718, to Hannen, which issued June 18, 1991, for a label applying apparatus. Secondary references were U.S. Patent No. 4,248,031, to Del Pozo, Jr., which issued February 3, 1981, for a stretch wrap machine, and U.S. Patent No. 6,370,839, of Nakagawa et al, that issued April 16, 2002, for a stretch wrapping machine. The filing date of this Application was August 9, 2000, which was shortly prior to the filing date of the International Patent Application which the instant Application is a Continuation Application, September 4, 2000. However, the priority date for the instant Application is October 5, 1999, which, of course, antedates the U.S. filing date of the Nakagawa et al reference. This may be immaterial inasmuch as all of the applied references are distinguishable because at least Hannen and Del Pozo, Jr. do not completely wrap the materials which are wrapped and additionally, because in all cases the materials which they teach being wrapped are not materials which are essentially pliant as wrapped such as cut crop no matter how tightly wrapped. In the Hannen reference, column 2, lines 49-53, it is indicated

that the labels are applied to large rolls of paper, cardboard and the like. In column 11, in the paragraph in lines 5-10, it is stated that the apparatus can be used with the advantage for non-cylindrical objects such as box-shaped objects or elongated flat objects which need not contain paper and need not be draped in paper or other wrapping material. But there is no suggestion in the Hannen reference that the material which is wrapped consists essentially of cut crop which, of course, has a considerable effect on the solidity of the bales and, in turn, on how labels are best applied thereto. The Del Pozo, Jr. reference relates to a machine for wrapping a skid-supported load with a stretch wrap film. It does not appear that the bottom of the load is wrapped, nor does it appear that the materials being wrapped are other than boxes having solid surfaces.

Insofar as the Nakagawa et al reference is concerned, although it may involve the complete wrapping of boxes together, those boxes do not contain agricultural produce consisting essentially of cut crop whereby the wrapping of the material and the applying of labels thereto is distinctive from the problems facing the inventors of the instant invention.

Concerning the applied references, it is submitted that the well-settled principle should be kept in mind to the effect that prior patents are references only for what they clearly disclose or suggest and that it is not proper use of a patent as a reference to modify its structure to one which the prior art references do not suggest. Most certainly, it is submitted that this is applicable to the non-allowed claims, as amended herein to set forth that the material being wrapped is an agricultural produce consisting essentially of cut crop and that the material is entirely wrapped so that it is surrounded on all sides, as well as including the application of appropriate labels thereto.

Also insofar as the rejections under 35 U.S.C. §103 are concerned, the Patent Examiner is, of course, well aware that virtually all inventions are combinations of old elements.

Accordingly, it is not uncommon for a Patent Examiner to find every element of a claimed invention in the prior art. But this is insufficient to negate patentability. Were it otherwise, very few patents would ever issue. Moreover, in rejecting patent applications solely by finding prior art corollaries for the claimed elements a Patent Examiner may be led to use, unconsciously or subconsciously, the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. To counter this potential weakness in the obviousness construct, the suggestion to combine requirement is a critical safeguard against hindsight analysis and rote application of the Legal Test for Obviousness. Even for rejections under 35 U.S.C. §103 based on a single prior art reference, still there must be a showing of a suggestion or motivation to modify the teachings of that reference. Usually this should be explicit. However, it may be implicit but, if so, it cannot be simply conclusory. Conclusory statements standing alone do not provide sufficient "evidence" for this purpose.

In rewriting the claims, the total number of claims is currently forty-four (44) and therefore has not been increased above those submitted by the Preliminary Amendment. However, the number of independent claims has been increased from five (5) to nine (9). It therefore appears that a further fee for the additional independent claims in the amount of \$168.00 is required and our check to cover same is submitted herewith. If this is in error, the Commissioner of Patents and Trademarks is authorized to debit or credit our Account No. 13-2000 as appropriate.

Further consideration and reexamination of this Application, in its amended form, is requested in view of 35 U.S.C. §132 and regulations in implementation thereof. It is submitted the Application in its amended form is free from ambiguity and avoids the references of record. It is further submitted the Examiner should have no difficulty in finding that the differences between the subject matter sought to be patented in this Application and prior art and usage

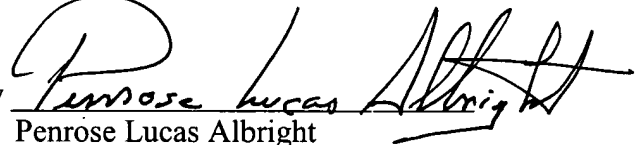
within her expert knowledge are such that the subject matter as a whole would not have been obvious at the time the invention was made to persons having ordinary skill in the art to which the subject matter of this Application pertains.

In view of the foregoing, the allowance of claims as now presented is earnestly solicited.

Respectfully submitted,

MASON, MASON & ALBRIGHT

By



Penrose Lucas Albright

Registration No. 19,082

2306 South Eads Street
P.O. Box 2246
Arlington, VA 22202
Tel (703) 979-3242
Fax (703) 979-2526

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